

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Invasive
Species/Infested Waters Citation
#117355 Issued to Dean M. Simonsen

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for a Prehearing Telephone Conference on August 15, 2012. Administrative Law Judge (ALJ) Richard C. Luis, Conservation Officer 2nd Lt. Larry Hanson and Dean M. Simonsen participated in the Conference. The parties agreed that no formal hearing would be needed and that the ALJ could make a recommendation based on the record created during the Prehearing Telephone Conference. To that end, Officer Hanson and Dean M. Simonsen both testified under oath. The OAH record closed at the conclusion of the Prehearing Conference/Hearing.

STATEMENT OF ISSUE

Whether Dean M. Simonsen violated Minn. Stat. § 84D.10, subd. 4(b), when he transported his watercraft on a public road with the drain plug in place?

The Administrative Law Judge concludes that Dean M. Simonsen violated Minn. Stat. § 84D.10, subd. 4(b), on July 4, 2012. Accordingly, the Administrative Law Judge **RECOMMENDS** that the Commissioner **AFFIRM** the Citation.

Based on the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Department of Natural Resources (Department, DNR) Conservation Officers are authorized to issue warnings or citations to a person who violates Minn. Stat. § 84D.10, subd. 4(b), by failing to remove plugs from water-related equipment before transporting that equipment.¹

2. On July 4, 2012, Conservation Officer 2nd Lt. Larry Hanson observed Dean M. Simonsen drive off a public road into a DNR access area on the shore of

¹ See Minn. Stat. § 84D.13, subd. 4(4).

Green Lake in Kandiyohi County, while pulling a boat. The boat had its drain plug in place during the time it was being transported.²

3. Second Lt. Larry Hanson then issued Citation No. 117355 to Mr. Simonsen. The Citation asserted that Mr. Simonsen transported a watercraft on a public road with the drain plug in place.³

4. Mr. Simonsen timely appealed the Citation.⁴ He states that he was not aware of the 2011 Statute that outlaws transportation of a boat without pulling the boat's drain plug. He admits he violated that Statute on July 4, 2012.⁵

5. Mr. Simonsen filed his appeal because he believes the \$100.00 fine he received is excessive, and requests leniency.⁶

6. Effective July 1, 2012, the penalty amount for failing to remove drain plugs (first violation) increased from \$50.00 to \$100.00, pursuant to Minnesota Laws 2012, ch. 272, sec. 15.

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Natural Resources have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50 and 116.072, subd. 6.

2. The Department has substantiated the violation and Citation. Mr. Simonsen admitted he was transporting a boat with its drain plug in, as charged in the Citation.

3. It is appropriate that the Commissioner affirm Invasive Species Civil Citation #117355 and require Mr. Simonsen to pay a \$100 fine for violating Minn. Stat. § 84D.10, subd. 4(b).

Based on the Conclusions, the Administrative Law Judge makes the following:

² Testimony of Officer Hanson.

³ Citation 117355.

⁴ Appeal Letter July 12, 2012.

⁵ Testimony of Dean M. Simonsen.

⁶ *Id.*

RECOMMENDATION

IT IS RECOMMENDED that the Commissioner of Natural Resources **AFFIRM** the Citation issued to Dean M. Simonsen on July 4, 2012.

Dated: August ____, 2012

RICHARD C. LUIS
Administrative Law Judge

Reported: Recorded Digitally

NOTICE

Pursuant to Minn. Stat. § 116.072, subd. 6 (e), the Commissioner may not issue a final order until at least five days after receipt of the report of the Administrative Law Judge. The persons to whom the order is issued may, within those five days, comment to the Commissioner and the Commissioner will consider the comments. The Commissioner must send a copy of the final decision to Dean M. Simonsen. The final Order of the Commissioner may be appealed pursuant to Minn. Stat. §§ 14.63-14.69. If the Commissioner fails to act within 90 days after the record closes, this recommendation will become the final decision in this matter.